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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

CARLO VERBERG ET AL

Serial No.: 09/832,119

Filed: July 15, 2003

For: A METHOD OF COOLING ANIMALS

Docket No.: 8553/210

Group Art Unit: 3643

Examiner: Thomas Price

RESPONSE TO RESTRICTION REQUIREMENT

To the Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is in response to the Official Action of October 3, 2005 which imposed a Restriction Requirement under 35 U.S.C. §121 to one of the following groups of claims:

Group I - Claims 85-92 drawn to a milking compartment classified in Class 119, Subclass 516; or

Group II - Claims 93-104 drawn to a cooling device classified in Class 119, Subclass 14.03.

In the Official Action it was stated that the inventions were considered to be distinct, each from the other, as related to combination and subcombination. In this connection, it was stated that the above groups of claims are distinct, one from the other, if it can be shown that (1) the combination claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations. Reference was made to MPEP Section 806.05(c). It was further alleged that in the instant case, 8553/210

the combination claimed does not require the particulars of the subcombination as claimed because a dairyman can use a conventional hose and water to cool an animal and the subcombination has separate utility such as in a carwash.

It was also stated in the Official Action that if Applicants elect the Group II claims, then a further election of species requirement is applicable: Species IIA as claimed in Claims 93-97 or Species IIB as claimed in Claims 98-104.

Applicants respectfully provisionally elect the Group I claims for prosecution in the instant Application with, however, traverse.

The Group I Claims 85-92 are drawn to a milking compartment having a cooling means disposed over an animal in the compartment, the cooling means comprising a plurality of nozzles providing a fine spray of atomized water on the back only of the animal in the compartment and air displacing means for providing a cooling-air flow over the wetted area. The Group II Claims 93-104 are directed to devices for cooling milk producing animals. The Species of Claims 93-97 (IIA) relates to a nozzle providing a fine spray of atomized water which is directed only to the back of an animal in a compartment and the quantity of water is limited to that received in spaces between the hairs of the animal's back and not as unevenly long droplets thereon, and an air displacing means is provided to cool the animal by promoting evaporation of the water that has been sprayed on the animal's back. The other Species, Group IIB, relates to Claims 98-104 which are directed to motor drivable brushes disposed on pivotal arms and air displacing means operatively associated with the motor drivable brushes, the surface of the animal being wetted being substantially limited to the back of the animal.

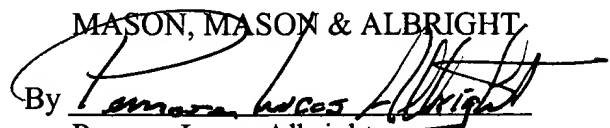
It is respectfully submitted that Claim 85 does not include a dairyman using a conventional hose with water to cool an animal. Claim 85 is not a method claim, but rather directed to a milking compartment for confining and milking an animal therein which comprises

a milking robot for automated milking of said animal in said compartment, a feeding trough for feeding the animal while it is being milked, and cooling means for cooling the animal while it is in said milking compartment, the cooling means being disposed over the animal and comprising a plurality of nozzles that provide a fine spray of atomized water which produces a wetted area substantially on the back of said animal while in said compartment, and, in addition, an air displacing means provides cooling-air flow over the wetted area. It is respectfully submitted that a dairyman could hardly be construed as being part of a milking compartment or cooling means comprising a plurality of nozzles or an air displacing means any more than a dairyman could be considered as being a milking robot or a feeding trough for feeding the animal. Further, a milking compartment which has an animal, feeding trough and milking robot could never be used as a carwash. Accordingly, it is submitted that the basis for a Restriction Requirement, particularly between the Group I claims and the Group IIA claims, is not appropriate. Moreover, the concept of limiting the cooling water to the back of the animal and wherein the wetting area comprises water that is between hairs of the animal and there are substantially no unevenly long droplets on the wetted area as set forth in Claims 86 and 93 are important. This is also true of the concepts in Claims 98-104.

In summary Applicants provisionally elect the Group I Claims 85-92 for prosecution with traverse, whereby withdrawal of the Restriction Requirement is respectfully solicited.

Respectfully submitted,

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Filed: November 3, 2005

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